

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 28 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NILKANTH BAPUJI MARATHI

SONKUSARE

Versus

STATE OF GUJARAT

Appearance:

MS SHILPA R SHAH for Petitioner

Mr M A Bukhari, APP for Respondent No. 1

SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 20/03/97

ORAL JUDGEMENT

This Special Criminal Application under Article 226 of the Constitution of India has been registered on a letter of one Nilkanth Bapuji Marathi. On 3.3.1997, he along with his wife Santa appeared before this court. They voiced the grievance that their son-Nandkishore has been murdered by his father-in-law who is indulged in the

business of Ganja. They orally expressed that the entire investigation in the case is mala fide and has been under the influence of Atmaram, father-in-law of the deceased. In view of this, a notice was given to the respondent and the office was also asked to file English translation of the letter. On the returnable date, Ms. Shilpa Shah, learned Advocate appeared on behalf of the applicants under the instructions of the Legal Aid Committee.

2. The say of the applicant-Nilkanth is that his only son Nandkishore was married to one Sunita, daughter of Atmaram on 26.5.1995. He was living separately in a rented house near the house of his father-in-law. He used to go to see them often. On 24.3.1996, at about 3.30 a.m the applicant's Bhanji Jawai (husband of sister's daughter) came to his residence and informed that his son-Nandkishore was beaten by his (Nandkishore's) father-in-law and others and on account of that he has become unconscious and his legs and hands were tied and then burnt him. Nandkishore's dead body was taken to L.G. Hospital. On this, the applicant along with his wife-Santha and other neighbours went to the Hospital. He found his son dead. They came to know that his son was murdered by Sunita Atmaram, Raju Atmaram, Sitaben Atmaram and Atmaram Barapatre. He gave information in this regard to the Amraiwadi police station. In spite of this, the police did not arrest the said accused persons. It is also stated that to his information the police has initially arrested the above persons and subsequently released them. The further say of the applicant is that he has been visiting police officers at different levels but as he is a poor man, there was no response.

2. Mr R L Gohil, Superintendent of Police I Division, Ahmedabad has filed affidavit denying the allegations of mala fide investigation. It is stated that the investigation was carried out by the Police Sub-Inspector, A D Vala, Amraiwadi Police Station. A Case has been registered as Accident Case No.20/96. It is also stated that initially the case was registered and investigated by Sub-Inspector-S V Ninama, Amraiwadi Police Station on 24.3.1996 at 6.30 p.m. As per the investigation, the deceased Kishorebhai Nilkanthbhai Sonkusara (Marathi) aged 28 years received burn injuries in the mid-night of 24.3.1996 at 0.30 hrs. and thereafter, his relatives shifted him to hospital. During investigation, statements of number of witnesses were recorded. It appears from the investigation, that the deceased Kishorebhai was not serving regularly and he was in the habit of drinking liquor, and therefore, there

was quarrel between the husband and the wife. On 23.3.1996, due to quarrel, wife of the deceased i.e. Sunita locked the house and had gone to the house of her parents. On the fateful day, near Ambaji temple, there was Garba programme on the occasion of 'Chaitri Norta'. The deceased Kishorebhahi was sitting near a wall in drunken condition. Wife of the deceased and her mother were watching the Garba programme from their house. Door of the house of the deceased was partly opened and one Dagdubhai who was residing just opposite to the house of the deceased saw fire in the house of the deceased. He heard shouts of the deceased "Sunita, save me". He rushed to the place where the garba programme was going on, and informed Sunita and other members. All the persons rushed to the place of the incident and tried to save the deceased. He was rushed to L.G. Hospital where he died. The further say of MR Gohil is that the P.S.I, Mr A D Vala collected the post mortem report from the Civil Hospital and according to the said report, cause of the death was shock extensive burn injuries. According to the F.S.L. report, there were presence of kerosene and Hydrocarbon in the sample collected from the scene of occurrence and sent to the Laboratory. Mr Vala submitted the report saying that it was a case of accident, which was approved by the Asstt. Commissioner.

3. I have heard Miss Shilpa Shah, learned Advocate and learned APP Mr M A Bukhari and also perused the police diary. Miss Shah submits that there are tell-tale circumstances leading to inference that the petitioner's son died of homicidal death and not accidental. Referring to the panchnama, she submitted that a lamp was found in a broken condition at the place of incident. A tin of kerosene of one and half litre was also found. The burnt pieces of cloths, some plastic pieces etc. were sent to the Forensic Laboratory and as per the F.S.L. report, there is presence of kerosene and hydrocarbon in the said samples. She has also pointed out that the case of prosecution is that deceased Kishorebhai was in drunken condition, but no efforts were made to send the viscera for chemical examination. She further submits that inspite of the fact that the parents of the deceased expressed their suspicion that the deceased was murdered at the hands of the father-in-law, brother-in-law and other members of the family, no investigation was directed in that line. In spite of the fact that the deceased was taken to the hospital at 0.30 hours on 24.3.1996, the father-in-law and other relatives did not inform the police with respect to the incident. A case was registered only on an information given by the Doctor. The immediate cause of death as was reported to

to the police was that the deceased sprinkled kerosene on him and thereafter, he burnt himself. The learned Advocate has relied upon a decision of the Apex Court in the case of Ashok Kumar vs. State of Rajasthan, reported in AIR 1990 SC 2134, wherein it is expressed that where there is a smell of kerosene coming from the body of the deceased, possibility of accident should be ruled out. According to Miss Shah, from the beginning, the investigation is being carried out dishonestly, otherwise even on the basis of the information received at the earliest by no stretch of imagination, it could be said to be a case of accidental death, it was a case of unnatural death.

4. Learned APP, Mr M A Bukhari has tried to explain all the infirmities and he submits that there has been a fair investigation and it was a case of accidental death. The report was submitted to the Asstt. Commissioner of Police and the same has also been granted.

5. Considering the contentions of the parties, it is not desirable for me to express any opinion at this stage to say that whether it is a case of accident, suicidal or homicidal death. Suffice it to say that I am satisfied that the investigation is lacking on a number of particulars. Prima facie there is enough material for challenge of the theory of accidental death put forward by the Police. No efforts have been made to examine the theory of homicidal or suicidal death. In view of this, ends of justice would be better served if the matter is re-investigated by an independent Investigating Agency. particulars. Before parting with, I record a word of appreciation for the labour put in by Miss Shilpa Shah, learned Advocate in presenting this case for a poor person.

6. In view of the aforesaid, this Special Criminal Application is allowed. I direct that the A.D. case No.20/96 may be re-investigated by the State C.I.D. Crime Branch. The Asstt. Commissioner of Police will ensure that within a week, the entire police papers are entrusted to the State C.I.D. Crime Branch. They will make a report to this Court on or before 28.4.1997.

Rule made absolute to the aforesaid extent.

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